

Dated: January 23, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

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[A-588-707]

**Granular Polytetrafluoroethylene Resin From Japan; Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests by a respondent and petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Japan. The review period is August 1, 1992, through July 31, 1993. This review covers one company, Daikin Industries, Ltd. As a result of the review, the Department has preliminarily determined that dumping margins exist for the respondent. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** January 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4733.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 3, 1993, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (58 FR 41239) of the antidumping duty order on granular PTFE resin from Japan (53 FR 32287, August 24, 1988). Respondent Daikin Industries, Ltd., and petitioners E. I. DuPont de Nemours & Company and ICI Americas, Inc., requested an administrative review in accordance with 19 CFR 353.22(a) (1993). On September 30, 1993, the Department published a notice of initiation of this review (58 FR 51053), which covers the period August 1, 1992, through July 31, 1993. The Department is now conducting this review pursuant to

section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

**Scope of the Review**

The antidumping duty order covers granular PTFE resins, filled or unfilled. The order explicitly excludes PTFE dispersions in water and PTFE fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.90 of the Harmonized Tariff Schedule (HTS). We are providing this HTS number for convenience and customs purposes only. The written description of scope remains dispositive.

The review covers one manufacturer/exporter of granular PTFE resin, Daikin Industries, Ltd. (Daikin). The period of review is August 1, 1992, through July 31, 1993.

**United States Price**

In calculating United States price (USP), the Department determined both purchase price (PP) and exporter's sales price (ESP), as defined in section 772 of the Tariff Act, to be appropriate. All sales were made through Daikin America, Inc. (DAI), a related sales agent in the United States, to an unrelated purchaser. However, whenever sales are made prior to the date of importation through a related sales agent in the United States, we typically determine that PP is the most appropriate determinant of the USP if:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related shipping agent;

2. Direct shipment from the manufacturer to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Granular Polytetrafluoroethylene Resin From Japan; Final Results of Antidumping Duty Administrative Review, 58 FR 50343, 50344 (September 27, 1993); Final Determination of Sales at Less Than Fair Value: New Minivans From Japan, 57 FR 21937, 21945 (May 26, 1992).

For Daikin's sales which satisfy the criteria listed above, we regard the routine selling functions of the exporter as merely having been relocated from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad

does not change the substance of the transactions or the functions themselves, and we therefore treated these sales as PP transactions in accordance with § 353.41(b) of the Department's regulations.

During the period of review DAI began to inventory subject merchandise in the United States based on anticipated demand. Where DAI's role included warehousing responsibilities in addition to routine selling functions, such that the date of importation preceded the date of sale, we regarded sales of such merchandise as ESP sales in accordance with § 353.41(c) of the Department's regulations.

We based PP and ESP on the packed, delivered price to unrelated purchasers in the United States. We made deductions, where applicable, for foreign brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, U.S. duty, U.S. harbor fees and merchandise processing fees, and inland insurance, in accordance with section 772(d) of the Tariff Act. We also treated certain early payment discounts as reductions in price, and deducted them accordingly, in accordance with the Department's policy. See *Sonco Steel Tube Div. v. United States*, 714 F.Supp 1218, 1222 (CIT 1989). For ESP sales we also made deductions, where applicable, for credit expense, replacement of defective merchandise, commissions paid to unrelated selling agents in the United States and indirect selling expenses, in accordance with section 772(e) of the Tariff Act.

We made an addition to USP for the Japanese consumption tax in accordance with our practice as set forth in *Silicomanganese From Venezuela; Preliminary Determination of Sales at Less Than Fair Value (Silicomanganese)*, 59 FR 31204 (June 17, 1994).

**Foreign Market Value**

Based on a comparison of the volume of home market and third country sales, we determined that the home market was viable. Therefore, in accordance with section 773(a)(1)(A) of the Tariff Act, we based FMV on the packed, delivered price to unrelated purchasers in the home market.

In the preceding administrative review we found that Daikin made home market sales below the cost of production (COP). Therefore, in accordance with our standard practice, we also conducted a COP investigation during the current administrative review. We calculated COP as the sum of Daikin's reported materials, labor, factory overhead, and general expenses.

We compared COP to home market prices, net of movement charges, price adjustments, and discounts.

As a result of our COP investigation, we found no below-cost sales, and therefore did not disregard any home market sales as being below cost.

We calculated FMV on a monthly weighted-average basis. We compared all U.S. sales to sales of identical merchandise in Japan. In accordance with our practice in this case, we disregarded sample sales as being outside the ordinary course of trade. The sales in question represent small quantities of granular PTFE resin sold to testing facilities in Japan at prices substantially higher than the prices of the vast majority of Daikin's sales. Further, the sales in question were not for consumption, but for evaluation purposes. See PTFE Resin From Japan, 58 FR at 50345.

Where applicable, we made deductions for inland freight, discounts, and post-shipment price adjustments. To adjust for differences in circumstances of sale between the home market and the United States, we first deducted direct selling expenses incurred in the home market, which included credit and replacement of defective merchandise. For comparison to PP sales, we then added direct selling expenses incurred in the United States for replacement of defective merchandise, credit, and commissions (because no commissions were paid in the home market). Where applicable, in accordance with § 353.56(b)(1) of the Department's regulations, we offset U.S. commissions by deducting home market indirect selling expenses from FMV in an amount not exceeding those commissions. For comparison to ESP sales, in accordance with § 353.56(b)(2) of the Department's regulations, we deducted home market indirect selling expenses in an amount not to exceed the sum of U.S. commissions and indirect selling expenses incurred in the United States.

On January 5, 1994, the Court of Appeals for the Federal Circuit, in *The Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States*, 13 F.3d 398 (Fed. Cir. 1994), held that the Department could not deduct home market movement charges from FMV pursuant to its inherent power to fill in the gaps in the antidumping statute. Accordingly, we now adjust for home market movement expenses under the circumstance-of-sale (COS) provision of 19 CFR 353.56 and the offset provisions of 19 CFR 353.56(b)(1) and (2), as appropriate. In this review, home market movement expenses incurred between the

warehouse and the customer after the sale were treated as direct COS deductions. Home market movement expenses were also incurred between the factory and the warehouse before the sale, and we have adjusted for such expenses as indirect selling expenses under the commission offset provision of 19 CFR 353.56(b)(1) and under the ESP offset provision of 19 CFR 353.56(b)(2), as appropriate.

In order to adjust for differences in packing between the two markets, we deducted home market packing costs from FMV and added U.S. packing costs. We also adjusted for Japanese consumption tax in accordance with our decision in *Silicomanganese*.

#### Preliminary Results of Review

As a result of our comparison of USP with FMV, we preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Period	Margin (percent)
Daikin Industries	08/01/92–07/31/93	23.19

Interested parties may submit written comments on these preliminary results. Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held approximately 35 days from the date of publication. Case briefs and other written comments from interested parties may be submitted not later than 21 days from the date of publication. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 28 days from the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. Upon completion of this review, the Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of

this administrative review, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rates for the reviewed companies will be those rates established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 91.74 percent, the rate made effective by the final results of the most recent administrative review of the order (see *PTFE Resin From Japan*, 58 FR at 50346). As noted in the Department's previous final results in this proceeding, this rate is the "all others" rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 23, 1994.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

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#### National Institute of Standards and Technology

##### Patent Licenses; ND Resources, Inc.

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of prospective grant of exclusive patent license.

**SUMMARY:** This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR